

**REMARKS**

Claims 1-36 and 39-41 are pending in the above-captioned application. By this Amendment, claim 37 is canceled without prejudice or disclaimer.

The Office Action asserts that this application contains at least two patentably distinct inventions related to a process for preparing testa-on cashew nuts and the products thereof. The Office Action requires a restriction per 35 U.S.C. § 121, to one of the following inventions:

- I. Claims 1-25, drawn to a process for preparing edible testa on cashews, classified in class 426, subclass 632; and
- II. Claims 26-41, drawn to a testa on cashew product, classified in class 426, subclass 632.

Applicant hereby elects group II, drawn to a testa on cashew product, with traverse. This election of group II, drawn to a testa on cashew product, reads at least on claims 26-41.

As discussed during the recent telephone interview with the Examiner Weier, Applicant respectfully requests that group I (claims 1-25), which is directed to processes for preparing testa on cashews, be re-grouped with elected group II. The Office Action asserts that although “Inventions I and II are related as process of making and product made,” the inventions are nonetheless distinct because “[i]n the instant case, the product may be made by a process wherein testa is removed from cashew and treated separately with a solvent and provided in a form that may be recoated on cashews or combined with together with a paste/spreadable form of cashew.” As was discussed, the basis for the restriction (*i.e.*, that testa could be removed, treated and reapplied to the cashews) is both (a) at odds with the invention and (b) is not practical.

The invention allows eliminating the step of removing the testa during the processing of cashews. As described in the application, traditional cashew processing requires the mechanical removal of cashew testa (which can result in damage to the cashew kernels). The invention resolves this problem by rendering the testa palatable, thus eliminating the need to mechanically remove the testa. In contract, the alternative process proposed by the Office Action for preparing testa on cashews (*i.e.*, removing the testa, treating the removed testa and reapplying the treated testa) would add several steps to current cashew processing procedures.

In addition to being antithetical to the invention, the alternative process proposed by the Office Action for preparing testa on cashews is not commercially practical. In particular, as described in the Application, the testa fully covers the cashew kernel. The testa remains on the cashew because it is a full, unopened jacket that is attached to the kernel at a spot in the inside curve of the cashew and sometimes also along the line where the two cotyledons are joined. Thus, in order for the testa to be removed from the cashew kernel (*i.e.*, peeling the cashew kernel), the testa necessarily has to be scratched/broken, particularly where it is attached to the kernel. Consequently, it is not possible to remove the testa of each kernel intact.

Additionally, it is not possible to reapply a removed, treated testa in a manner that maintains and/or replicates the appearance and physical characteristics of the testa on the cashew prior to removal. First, the outer surface of the testa has a distinctly darker color than the inner surface. Additionally, the outside surface of the testa is textured (similar to rough stucco) unlike the inside surface which is smoother. Therefore, if the treated testa, which has different colors on both sides, is textured on the outside, and is primarily attached to the cashew kernel at one spot, is removed, treated, converted to a powdered form and reapplied to the cashew, it no longer is in its original state and is more akin to a coating. Moreover, the testa is not inherently sticky and cannot, therefore, be reapplied to the surface of the cashews without an adhesive. As such, the process proposed by the Office Action for preparing testa on cashews by manually orienting and reapplying pieces of testa back onto cashew kernels in order to replicate a testa-on-cashews is not practical and indeed is probably not feasible. <sup>1/</sup> Therefore, Applicant respectfully disagrees with the assertion in the Office Action that the claimed process can be used to make other and materially different products.

The Office Action also requires an election of species per 35 U.S.C. § 121, to one of the following species:

If Group I is elected:

A1. Dry roasting testa on cashews (claim 6); and

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<sup>1/</sup> Notwithstanding the foregoing, and although the process proposed by the Office Action for preparing testa on cashews adds steps (described above) inconsistent with the purpose of the invention, the proposed process could possibly be applied to prepare a product similar to a

B1. Oil roasting testa on cashews (claim 7)

If Group II is elected:

A2. Dry roasted testa on cashews (claim 28)

B2 Oil-fried testa on cashews (claim 29).

Applicant hereby elects A2, dry roasted testa on cashews (claim 28) with traverse.

Applicant notes however that claims 26, 27 and 30 to 41 are generic and that Applicant expects that such generic claims shall be allowable. Therefore, Applicant respectfully requests that such claims be re-grouped. Applicant reads the election of species requirement to require a provisional election in the event that a generic claim is not allowable. Thus, Applicants above election is made provisionally in the event a generic claim is not allowable.

**Conclusion**

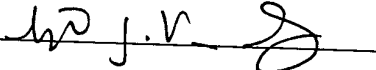
Applicant hereby elects group II, reading at least on claims 26-41, with traverse.

Applicant also elects group A2 with traverse. For the foregoing reasons, Applicant also requests that group I, claims 1-25 be considered in conjunction with elected group I.

If there are any fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-1349. If a fee is required for an extension of time under 37 C.F.R. § 1.136 that is not accounted for in the enclosed transmittal, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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spreadable form of the testa on cashews of the invention. Thus, claim 37 has been canceled without prejudice or disclaimer.